UNITED STATES DEPARTMENT OF AGRICULTURE
Farm Service Agency
Washington, DC 20250

Notice FC-166

1980-B

For: State and County Offices

Servicing Guaranteed Farm Loans Sold on the Secondary Market

Approved by: Deputy Administrator, Farm Loan Programs

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1 Overview

A Background

Increasingly, lenders are selling the guaranteed portion of their Guaranteed FLP loans to private investors or the Federal Agricultural Mortgage Corporation (Farmer Mac). These investors, or secondary market holders, receive the interest income on the guaranteed portion and the Government guarantee insures their investment. An active and efficient secondary market increases the amount of credit capital available in rural areas and enhances the attractiveness of FSA guaranteed loans to commercial lenders.

B Purpose

This notice clarifies FSA policy and procedures for handling loans sold on the secondary market. It does not replace any of the requirements of form FmHA 449-36.

C Contact

If there are questions about this notice, contact LSPMD, Guaranteed Loan and Inventory Property Branch at 202-690-4012.

Disposal Date	Distribution
March 1, 1999	State Offices; State Offices relay to County Offices

2 Sale or Assignment of a Loan Note Guarantee

A Approval

Agency loan servicing officials are responsible for ensuring that all requirements of FmHA Instruction 1980-B, section 1980.119 are met before signing form FmHA 449-36. When a guaranteed loan is sold, the lender should be reminded of its continued servicing responsibilities under the terms of their promissory note, security agreement, Lender's Agreement, and Loan Note Guarantee. A guaranteed loan cannot be sold on the secondary market or reassigned by a holder if it is:

- in default
- a line of credit

  Note: This includes a line of credit that was not paid in full that has been rescheduled over a multi-year term.

- subject to an existing form FmHA 1980-64, unless the Assignment Guarantee Agreement is executed based on the guaranteed percentage of the full payment amount and reflects the reduced interest rate.

The Agency loan servicing official should remind the parties that under the Assignment Guarantee Agreement, the lender receives all payments, including any loan subsidy. It is the lender's responsibility to remit to the holder its pro rata share of such payments minus the lender's servicing fee.

Interest assistance will not be approved for a loan that has been sold, unless it is approved subject to the lender repurchasing the loan from the holder or the holder agrees, in writing, to the interest assistance agreement.

Farmer Mac will not purchase portions of FSA guaranteed loans with less than 12 months to maturity. However, FSA regulations do not prohibit the sale or reassignment of these loans.

3 Servicing Defaulted Loans Sold on the Secondary Market

A Repurchase by Lender

For the lender, the secondary market is an effective tool to:

- enhance earnings on a loan
- reduce risk of interest rate fluctuations
- enable the lender to offer longer terms
- improve loan-to-deposit ratios.

The secondary market is not intended as a means for a lender to transfer default risk or collection responsibilities to the Government or shield itself from negligent servicing of the borrower's account.

According to FmHA Instruction 1980-B, section 1980.119, if at the request of the holder, a lender refuses to repurchase a loan, the holder may demand repurchase from the Agency. Within 30 calendar days of the holder's demand, FSA shall do the following.

- Review the borrower's FSA file. If the information in the file indicates that the default is likely to be corrected by a rescheduling or reamortization, the FSA loan servicing official will remind the lender that the:
  - loan cannot be restructured if FSA repurchases the loan
  - lender will be responsible for expeditiously liquidating the loan collateral.
- Verify the amounts owed the lender and holder and repurchase the loan.
- Complete form FmHA 1980-37 and forward it to KCMO, St. Louis Finance Office for processing. According to form FmHA 449-36, paragraph 8 the Agency will only pay interest on the guaranteed portion for up to 90 calendar days from the date of the demand on the lender.

Unpaid servicing fees earned by the lender will not be paid directly by FSA as part of the repurchase or in any resulting loss claim. The lender may collect its servicing fee only through payments made by the borrower or another arrangement with the holder.

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3 Servicing Defaulted Loans Sold on the Secondary Market (Continued)

A
Repurchase by Lender (Continued)

In a reorganization bankruptcy, the Agency will pay interest to the holder only up to the effective date or confirmation date of the confirmed plan of reorganization, whichever is later, on the guaranteed portion of the debt that the lender is prohibited from collecting under the plan, regardless of the date of demand. A confirmed bankruptcy plan that conflicts with the provisions of FmHA Instruction 1980-B, section 180.119, or this notice, will be forwarded to OGC for advice.

B
Actions After FSA Repurchase

FmHA Instruction 1980-B, section 1980.119 (h) requires the lender to liquidate the account or reimburse FSA the amount of the repurchase within 180 calendar days of the repurchase. Consequently, for every loan that the Agency repurchases, or has repurchased, since July 26, 1993, the guarantee has been paid, and the lender must reimburse the Agency for the amount of repurchase within 180 calendar days. This provision applies regardless of whether the:

- loan has been paid current
- borrower has filed bankruptcy
- default can be corrected by restructuring
- repurchase was triggered by an oversight on the part of the lender or FSA.

Immediately following repurchase, FSA will notify the lender, in writing, of its continued responsibility to service the loan according to form FmHA 449-34, paragraph 9 and request that the lender provide 1 of the following within 60 calendar days.

- Payment of the entire guaranteed portion of the loan held by FSA. Details of the repurchase will be provided in the FSA request, including the:

    - date demand was made on the lender
    - date demand was made on FSA
    - name of the previous holder
    - amount of repurchase paid by FSA
    - the daily interest accrual on the guaranteed portion of the loan.

    FSA will complete form FmHA 1980-43 and forward the payment to KCMO, St. Louis Finance Office. The lender will complete form FSA 1980-41 indicating that the guarantee is to be terminated.

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3 Servicing Defaulted Loans Sold on the Secondary Market (Continued)

B
Actions After FSA Repurchase (Continued)

- A properly completed form FmHA 449-30. The form will be coded as a final loss for review by SED or designee. If the loss is less than the amount held by FSA, the loss claim should include a check from the lender for the difference plus interest up to the date of payment.

- A liquidation plan, if not already received. Interest accruing to FSA as holder does not cease until payment is received from the lender. If liquidation is projected to take longer than 180 calendar days after FSA repurchase, the lender will be requested to provide a final loss claim based on receiving the market value of the collateral.

Similar FSA requests will be sent to the lender again after 60 and 120 calendar days. If the lender does not comply with the request after 180 calendar days, or the lender responds to earlier requests with a written refusal to comply with the provisions of section 1980.119 (h), then SED shall:

- notify the lender of FSA's intent to collect the repurchase amount by administrative offset according to RD Instruction 1951-C

  Note: Form Letter 1951-C-1 or a similar format may be used.

- refer the case to their Regional OGC for referral to the United States Attorney's office to initiate legal action to collect the amount owed FSA for the repurchase

- if the lender is a Certified Lender Program (CLP) lender, CLP status will be revoked according to FmHA Instruction 1980-B, section 1980.190 (b)(3)(iv)(D).

  Note: Lenders have the option of not repurchasing. Refusal to repurchase from holders will not be used as a basis for status revocation as long as the 180-calendar-day reimbursement or liquidation requirement is met.

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3 Servicing Defaulted Loans Sold on the Secondary Market (Continued)

C
Other Actions

According to FmHA Instruction 1980-B, section 1980.146 (a), liquidation responsibilities may be assumed by the Agency only at its discretion and may not be assigned to FSA by the lender without a written request from FSA. FSA may request that the lender assign their promissory note and security instruments to FSA and FSA will liquidate the loan. SED may request DAFLP permission to require assignment of liquidation responsibilities on a case-by-case basis and only as a last resort when the lender's liquidation plan is not likely to provide reasonably adequate recovery.

After repurchase, FSA cannot resell a current or serviceable loan to a lender with the guarantee remaining intact. However, a lender may restructure a loan that has been repurchased by FSA and continue with the borrower at their discretion, notwithstanding the termination of the guarantee and their responsibility to reimburse FSA for the repurchase. FSA concurrence with requests for servicing under the provisions of FmHA Instruction 1980-B, section 1980.124 or 1980.125, is not required for loans that FSA repurchased.

FSA will consider a Request for Guarantee for a new guaranteed loan to refinance an FSA repurchased loan.

State Offices may implement the requirements of this notice through issuance of a State notice or instruction. Any revisions or modifications to this notice must be approved by DAFLP, unless revision is specifically required by State law.